

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

New York Republican Federal Campaign Committee
and Louis B. Stone, as treasurer, et al.

MUR 4648

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On June 17, 1997, the Commission found reason to believe the New York Republican Federal Campaign Committee ("the Committee") violated 2 U.S.C. §§ 432(h)(1), 434(b)(5)(A), (6)(B)(i), (6)(B)(v), and 441b(a), and 11 C.F.R. § 104.3(b)(3)(i), (viii), (ix), during the 1994 and 1996 election cycles.¹ The circumstances surrounding most of the violations involved the Committee's distribution of \$60,000 to five individuals and the Kings County Republican Committee ("KCRC"), in the days prior to the 1994 general election. The Commission's findings with regard to the 1994 cycle activity were based on the apparent failure of the Committee to make certain disbursements by check drawn on an account at a qualified campaign depository, and its failure to report the proper recipients of the disbursements. The Commission's findings with regard to 1996 cycle activity went solely to its failure to properly report the purpose of the disbursements.

¹ Certain of the findings involving 1996 election cycle violations were of knowing and willful activity.

In addition, the Commission made reason to believe findings against the five individuals,² the KCRC, and Dorn & Associates, a law firm apparently connected to the KCRC.³ The Commission approved Subpoenas to Produce Documents and Orders to Submit Written Answers to be sent to all Respondents.

A joint response was submitted by the Committee and the five individuals ("Respondents"). In addition, responses were submitted by the KCRC and Dorn and Associates. Upon review of the joint response, this Office contacted common counsel to follow-up on certain documents which had not been produced pursuant to the Subpoenas and Orders. Such documents included copies of the checks issued in 1994 and 1996, as well as a document identified by the Committee as "a list of the individuals who were volunteers and, therefore, eligible to receive payments while assisting the Party's poll watcher program on election day 1994 and 1996." The Committee declined to turn over this last document until the Commission granted a protective order, without explaining why such an order was needed.

In response to this Office's inquiry, the Committee produced all of the checks relating to the 1994 and 1996 disbursements at issue. Attachment 1. The Committee, however, reiterated its opposition to producing the list absent a protective order. According to the Committee, if the

² As was noted in the First General Counsel's report in this matter dated June 5, 1997, pursuant to 2 U.S.C. § 432(h)(1), disbursements other than petty cash disbursements of \$100 or less must be made by a check drawn on the committee's account at its qualified campaign depository. In earlier MURs, the Commission had found reason to believe that individuals other than the treasurer of a committee had violated this section. Thus, the Commission made findings against the five individuals for violations of 2 U.S.C. § 432(h)(1).

³ The original premise for finding reason to believe against the KCRC and Dorn & Associates revolved around the report by the Committee that it had issued a check to the KCRC for election day expenses the day after the 1994 general election. It thus appeared that the KCRC, an organization not registered with the Commission, advanced funds on behalf of the Committee, and that this money may have contained impermissible funds, including funds from Dorn & Associates, a corporation which appeared to be the alter ego of the KCRC. Accordingly, the Commission found reason to believe that the Kings County Republican Committee and its treasurer violated 2 U.S.C. §§ 433(a), 434(a)(1) and 441b(a), and that Dorn & Associates, P.C. violated 2 U.S.C. § 441b(a).

list were placed on the public record, it would threaten the constitutional rights of association of itself and its volunteers, and disclose information and documents containing proprietary information.

In its response to the reason to believe findings, the Committee admitted that it might be "in technical non-compliance" because it never set up a separate petty cash account for the disbursements, and indicated its willingness to conciliate on this issue at this time.⁴ According to their response, Respondents are not interested in discussing conciliation on any failure to properly report disbursements and apparently are unwilling to file any necessary amended reports which would do so.

Based on a review of the information received in response to the reason to believe findings and Subpoenas and Orders, and Respondents' willingness to conciliate on its interpretation of only one issue, this Office recommends that the Commission reject their offer to conciliate at this time. This Office is also recommending that the Commission take no further action with respect to certain previous reason to believe findings, and is making additional recommendations for findings of reason to believe against the Committee and Arthur Bramwell of the KCRC. Further, this Office believes that additional investigation is necessary and recommends that supplemental questions be sent and that depositions be authorized. Pending the completion of these other avenues of discovery, this Office recommends that the Commission hold in abeyance any enforcement of the Subpoena to Produce Documents to the Committee regarding the withheld list.

⁴ Indeed, Respondents interpretation of the Commission's finding is faulty. The issue is not that the Committee made petty cash disbursements from other than a petty cash account; the issue is that the Committee made certain disbursements which should have been made by check, in cash.

II. DISCUSSION

A. 1994 and 1996 Disbursements

The joint response from the Committee and the five individuals confirms that the money paid to Jeffrey T. Buley, David R. Dudley, Mary F. Obwald, Gregory V. Serio and Luther Mook in 1994 was passed on to other persons. According to the response, on the day before the general election Buley, Dudley, Obwald and Serio cashed their checks at Key Bank in Albany. Although the response identified Key Bank as the Committee's depository, this Office can find no evidence that the Committee ever designated Key Bank as a depository pursuant to 2 U.S.C. § 432(h)(1).⁵

Immediately after cashing their checks, and for reasons unexplained in the response, Dudley, Obwald and Serio turned their cash over to Buley.⁶ Buley took the \$50,000 in cash and drove to New York City where, according to him, "[t]o the best of my knowledge and belief, and pursuant to my directions, all the money was disbursed to the approximately 10,000 volunteers." Once again for reasons unexplained, Mook distributed his \$5,000 separately and Arthur Bramwell negotiated the check issued to the KCRC and appears to have distributed that \$5,000 separately as well.

According to the joint response, all of the money involved was used to cover the expenses of poll watchers on election day for "food, transportation, and in some cases, baby-sitting."

⁵ The account on which the Committee issued checks for the 1996 disbursements was held at Trustco Bank. This Office cannot find any evidence that the Committee ever designated Trustco Bank as a campaign depository either. During our investigation, this Office will attempt to ascertain whether the Committee designated Key Bank or Trustco Bank as depositories and, if not, will make appropriate recommendations to the Commission.

⁶ The copies of the checks produced pursuant to the Commission's Subpoenas and Orders show that the checks were cashed around 12 noon on November 7, 1994.

Jeffrey Buley had assertedly concluded that "the best system for disbursing the funds to the volunteers was to have checks cut by [the Committee] to a number of individuals." The joint response makes the conclusory statement that "all disbursements that should have been reported were reported. All disbursements that were a part of this program that were greater than \$200 were reported by the Party, and the public and Commission received all the information required by the Act and the regulations." Despite their assertions, this Office believes that, based on information submitted by the Respondents, and the reasonable inferences to be drawn therefrom, several questions remain and further investigation is warranted.

First, the manner in which the cash initially was distributed to Buley raises a number of questions. The Committee issued four checks to four individuals, who then proceeded together to a bank and cashed the checks. This cash was then given to one of the four, namely Mr. Buley. This Office cannot conceive of a logical explanation for not simply cutting one check to Mr. Buley for the full amount, other than wanting to conceal the fact that Mr. Buley was given \$50,000 to distribute. In addition, the fact that three of the individuals who received checks cashed them and turned the cash over to Buley undercuts the only explanation provided by Respondents, which was that cutting multiple checks was the best way for dispersing money to the volunteers. At the very least, such a scenario raises serious questions and requires additional explanation.

Second, Mr. Buley's statement that the money was distributed "pursuant to [his] directions" strongly suggests that he did not personally distribute the \$50,000 in cash. Rather, it appears that Buley disbursed the \$50,000 to other, as yet unnamed, persons, who then distributed the funds to the ultimate recipients. According to information produced by Respondents,

Jeffrey Buley obtained \$50,000 in cash around noontime on November 7, 1994, the day before the general election. Sometime after that, Mr. Buley drove from Albany to New York City, a distance of approximately 150 miles. After arriving, Respondents assert that Mr. Buley saw to the distribution of the \$50,000 in cash to 10,000 individuals, an average of \$5 per individual. That Mr. Buley could perform such a task by himself is highly unlikely. Also, the stated use for the money, to reimburse individuals engaged in poll watching and ballot security efforts for transportation, meal expenses, communications and day care, does not seem plausible, given the insubstantial sum, on average, given to each individual. Based on the unlikelihood of the facts as presented and the possible resulting violations, this scenario also deserves further scrutiny.⁷

The checks involved in the 1996 disbursements were handled slightly differently. Then, checks totaling \$22,500 were made out to eight individuals, including Jeffrey Buley, in amounts of either \$2,500 or \$3,000. Buley himself signed the checks on behalf of the Committee.⁸ With no explanation provided, the response states that the individuals other than Mr. Buley endorsed their checks and returned them to him. Mr. Buley then cashed them at a bank and proceeded to New York City with the \$22,500 in cash. According to Buley, he "directed that all the money be disbursed to the approximately 8,000 volunteers and that no volunteer receive more than \$99 from [the Committee] for his or her participation in the election day program."

⁷ If Mr. Buley disbursed the \$50,000 to intermediaries who then distributed the funds to the ultimate recipients, and if these intermediate disbursements were in amounts of more than \$100, individual checks should have been issued to the intermediaries. 2 U.S.C. § 432(h)(1). In addition, if these intermediate disbursements were in amounts of \$200 or more, then the Committee should have reported the identities of the intermediaries. 2 U.S.C. § 434(b)(6)(B)(i).

⁸ Respondents have asserted that Buley served as legal counsel to the Committee at this time, but have not identified any financial responsibilities held by him.

The same questions surrounding the 1994 activity surround the 1996 activity. First, there does not appear to be a valid reason, nor has one been given, for the Committee to have cut eight checks, only to have the recipients endorse them and give them to Jeffrey Buley. This scenario is further suspect as Jeffrey Buley signed the checks. Mr. Buley's statement concerning the 1996 checks again suggests that he passed the cash on to intermediaries who then passed it on to the ultimate recipients. Buley's statement that no volunteer received more than \$99 is apparently in reference to the requirement at 2 U.S.C. § 432(h)(1) that disbursements of more than \$100 be made by check. Indeed, it appears that intermediate recipients may have received more than \$100, but that the ultimate recipients received much less than \$99, an average of slightly less than \$3 per person. Thus, with respect to the \$22,500, questions also remain as to whether checks should have been used for disbursements to intermediate recipients and whether the identities of these recipients should have been reported. Also unclear are the actual purposes for the payments in 1994 and 1996.

For both the 1994 and 1996 disbursements, Respondents have essentially argued that, because the money was ultimately disbursed as petty cash, no greater reporting obligation was required.⁹ The Commission, however, previously rejected this same argument in MUR 3974. In that matter, the Rangel for Congress Committee issued signed checks to Congressman Charles Rangel which had been made out to cash. Congressman Rangel then negotiated the checks and turned the cash over to his campaign manager, who then distributed this cash in unknown amounts to unknown persons. The checks issued to Congressman Rangel had been reported as

⁹ Respondents make this argument even though they admit that no petty cash fund, from which all petty cash disbursements must be made, was ever set up.

unitemized disbursements. No records of the disbursements were maintained. On this set of facts, the Commission found probable cause to believe that the Rangel for Congress Committee failed to properly report the identities of recipients of disbursements, failed to maintain records of disbursements, and made disbursements, which should have been made by check, in cash.¹⁰

B. New Recommendations Regarding Violations

1. Previous Findings

The Committee and the KCRC have produced copies of the \$5,000 check the Committee issued to the KCRC. Those copies clearly show that the check was issued the day before the general election, and was cashed the day of the general election. Thus, the premise for the initial findings of reason to believe against the KCRC and Dorn & Associates, that the KCRC, an organization not registered with the Commission, advanced funds on behalf of the Committee, and that this money may have contained impermissible funds, including funds from Dorn & Associates, a corporation, appears to no longer be valid, although there now appears to be another instance of misreporting by the Committee. It is also possible that 2 U.S.C. § 432(h)(1) may have been violated through the distribution of the cash obtained from the check made out to the KCRC. See the discussion below. However, this Office recommends that the Commission take no further action against the Kings County Republican Committee with respect to violations

¹⁰ In our brief in that matter, this Office noted that "[t]he petty cash provision is a narrow exception to the Act's broad requirement that all disbursements be made by a check drawn on a designated account. It is well established that a petty cash fund is a sum of 'currency' maintained for 'small day-to-day cash expenses.' Cf. *FEC's Financial Control and Compliance Manual for Presidential Primary Candidates*, 1992, page 123, 1987, page 115." This Office further noted that the cash at issue in the Rangel matter was derived "from pre-signed, blank checks routinely carried by the Congressman," and that the cash was used for "major election-related campaign spending, not the kind of minor day-to-day expenses that are to be paid for with petty cash." *MUR 3974, Rangel for Congress, General Counsel's Brief dated March 13, 1997 at 3.*

of 2 U.S.C. §§ 433(a), 434(a)(1) and 441b(a), and Dorn & Associates, P.C. with respect to a violation of 2 U.S.C. § 441b(a).

2. New Violations/Reason to Believe Findings

Because Arthur Bramwell negotiated the check issued by the Committee to the KCRC, it now appears that Arthur Bramwell distributed cash on behalf of the Committee the day of the general election. As was noted in the First General Counsel's report in this matter dated June 5, 1997, pursuant to 2 U.S.C. § 432(h)(1), disbursements other than petty cash disbursements of \$100 or less must be made by a check drawn on the committee's account at its qualified campaign depository. In previous matters, the Commission found reason to believe that individuals other than the treasurer of a committee violated this section. Accordingly, given his apparent role in distributing cash on behalf of the Committee rather than the required checks, this Office recommends that the Commission find reason to believe that Arthur Bramwell violated 2 U.S.C. § 432(h)(1).¹¹

Pursuant to 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i), a political committee must report the name and address of each person to whom an expenditure in excess of \$200 is made by that committee to meet an operating expense, together with the date, amount and purpose of such operating expenditure. With respect to the 1994 disbursement to the KCRC at issue, the Committee misreported the date of the disbursement as the day after the general

¹¹ The Commission has previously found reason to believe that the Committee violated 2 U.S.C. § 432(h)(1) during the 1994 election cycle by making cash disbursements in excess of \$100. It now appears, given the statements in the joint response, the Committee has violated section 432(h)(1) during the 1996 election cycle by making cash disbursements in excess of \$100. Because the Commission has already made such a finding, there is no need to do so again. However, this Office will inform the Committee of the additional basis for believing this section has been violated.

election, rather than the day before the general election. The Committee thus violated 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i) in this regard. With respect to the 1996 disbursements at issue, the Commission has previously found reason to believe that the Committee violated this section by failing to properly report the purpose of these disbursements. Respondents' description of how these checks and the resultant cash were handled now suggests that other persons should have been identified as the recipients of these disbursements. Specifically, as with the 1994 disbursements, it appears that Jeffrey Buley passed along cash in amounts of \$200 or more to certain intermediaries, and that the Committee did not report the identities of these intermediaries. Accordingly, it now appears that the New York Republican Federal Campaign Committee and Louis B. Stone, as treasurer, violated 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i) by failing to report the proper recipients of these disbursements.¹²

C. Additional Discovery

To resolve all of the issues addressed above, this Office believes an additional Order to Submit Written Answers to Jeffrey Buley is required. Such an order would seek greater detail regarding to whom and in what amounts Mr. Buley distributed the \$50,000 in 1994 and the \$22,500 in 1996. Also, because both Luther Mook and Arthur Bramwell of the KCRC received checks of \$5,000 for similar purposes, this Office believes it would be prudent to seek greater detail from them regarding to whom and in what amounts they distributed the proceeds of those checks.

¹² Because the Commission has previously found reason to believe that the Committee violated 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i), there is no need to make additional findings. As with the new violations of 2 U.S.C. § 432(h)(1), this Office will inform the Committee that there now appears to be an additional basis for believing that those sections were violated.

In addition, this Office believes that for a full understanding of the activity at issue, depositions of Mr. Buley and the other individuals who received checks will be required. Accordingly, this Office recommends that the Commission approve the attached Orders to Submit Written Answers to Jeffrey T. Buley, Luther Mook and Arthur Bramwell. This Office further recommends that the Commission approve the appropriate Subpoenas for Deposition to Jeffrey T. Buley, Mary F. Obwald, Gregory V. Serio, David R. Dudley, Luther Mook, Arthur Bramwell, Kenneth Dippel, Lisa Herbst Ruggles and Darryl Fox.¹³

D. Outstanding Subpoena to Produce Documents

Finally, as noted, the Committee has declined to turn over a list of persons eligible to receive payment as poll watchers until the Commission grants a protective order assuring that the list will not be placed on the public record. This Office notes that the list was not sought specifically; rather, it was identified by the Committee as a document within the scope of the Commission's Subpoena. The Committee has cited the First Amendment rights of association of its volunteers in refusing to turn over this list, absent some assurance it will not be made public.

This Office does not believe it is necessary at this time to address the merits of Respondents' argument because there are other ways to obtain the necessary information without having to undertake subpoena enforcement. Nevertheless, this Office does not find Respondents' position persuasive or strong. As Respondents note correctly in their response, New York State

¹³ This list includes all of the individuals who received checks in connection with the 1994 election, and a majority of the individuals who received checks for the 1996 election. Mary F. Obwald and Jeffrey T. Buley received checks both times. It is unclear whether depositions of all these individuals will be needed, but this Office believes that it is the most expeditious approach to obtain approval for these deposition subpoenas at this time.

law allows a party to have three poll watchers at an election district polling station. N.Y. Elec. Code § 8-500(1). What Respondents fail to note, however, is that, also under New York State law, the appointment of poll watchers must be by a certificate in writing delivered to an inspector at the election district. N.Y. Elec. Code § 8-500(3). During a conversation with staff of the New York State Board of Elections, this Office was informed that such certificates are maintained by the county boards of elections and are subject to the New York Freedom of Information Act. Thus, Respondents' fear that the names on the list will be made public through this matter appears to be unfounded, as the names are already subject to public scrutiny.¹⁴

Although it may become necessary at some point to enforce the Subpoena to Produce Documents and to thoroughly address the merits of Respondents' First Amendment argument, this Office believes that the information necessary to prove or disprove the violations in this matter may be obtainable through additional Orders to Submit Written Answers to be sent to Jeffrey T. Buley, Luther Mook and Arthur Bramwell. These are the individuals who have the most direct knowledge as to whom the cash was distributed and in what amounts. If necessary, this Office can then approach those individuals identified in response to these Orders, and seek further information surrounding the distribution and use of the money.¹⁵

This Office is mindful that a refusal to comply with a Commission subpoena should not be taken lightly; however, as discussed above, this Office believes that there are more

¹⁴ Indeed, the New York City Board of Elections has informed this Office that there are 1250 polling places in New York City, allowing for, at most, 3,750 poll watchers to be appointed by the Committee. The Committee has stated that it paid approximately 10,000 volunteers in New York City in 1994, and 8,000 volunteers in New York City in 1996, each number being well-above the number of allowed poll watchers. This raises questions as to what services were performed by the majority of volunteers who were not poll watchers and thus the purposes of the payments to them.

¹⁵ This Office will also seek records of poll watchers registered by the Committee with the various relevant county boards of elections in New York.

expeditious ways to obtain the information withheld by the Committee than through protracted litigation. So as not to appear to condone the Committee's tactics, this Office does recommend that the Commission reject the request for a protective order, and that it hold in abeyance its consideration of whether to seek judicial enforcement of the subject subpoena pending the completion of other avenues of discovery.

E. Conciliation Request

As stated above, the Committee has admitted that it might be "in technical non-compliance" because it never set up a separate petty cash account for the disbursements at issue, and has indicated its willingness to conciliate on this issue at this time. This report demonstrates that not only is Respondents' interpretation of this issue incorrect, but that there are numerous other violations involved in this matter, and that the full story behind the disbursements is not yet known. Accordingly, this Office recommends that the Commission reject at this time the request of the Committee to enter into conciliation.


III. RECOMMENDATIONS

1. Take no further action against the Kings County Republican Committee and Dorn & Associates, P.C., and close the file as to them.
2. Find reason to believe that Arthur Bramwell violated 2 U.S.C. § 432(h)(1).
3. Approve the attached Orders to Submit Written Answers to Jeffrey T. Buley, Luther Mook and Arthur Bramwell.
4. Approve the appropriate Subpoenas for Depositions, to Jeffrey T. Buley, Mary F. Obwald, Gregory V. Serio, David R. Dudley, Luther Mook, Arthur Bramwell, Kenneth Dippel, Lisa Herbst Ruggles and Darryl Fox.
5. Reject the request of the New York Republican Federal Campaign Committee and Louis B. Stone, as treasurer, to issue a protective order regarding its production of the so-called "volunteer list."

6. Hold in abeyance any consideration of whether to seek judicial enforcement of the Subpoena to Produce Documents issued to the New York Republican Federal Campaign Committee and Louis B. Stone, as treasurer, pending the completion of other avenues of discovery.
7. Reject the request of the New York Republican Federal Campaign Committee and Louis B. Stone, as treasurer, to enter into conciliation at this time.
8. Approve the attached Factual and Legal Analysis and the appropriate letters.

Lawrence M. Noble
General Counsel

12/1/97
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments:

1. Copies of checks
2. Orders to Submit Written Answers (3)
3. Factual and Legal Analysis

Staff Assigned: Tony Buckley